

EXHIBIT G

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS
NO. 04-11450-RGS

* * * * *

CRYSTAL MOTOR EXPRESS, INC.,
Plaintiff

vs.

TOWN OF LYNNFIELD,
Defendant

* * * * *

DEPOSITION OF WILLIAM GUSTUS, a
witness called on Behalf of the Plaintiff,
pursuant to Massachusetts Rules of Civil
Procedure, before Diane M. Durette, a
Registered Professional Reporter and Notary
Public in and for the Commonwealth of
Massachusetts, at the Offices of Looney &
Grossman, 101 Arch Street, Boston,
Massachusetts on Wednesday, July 27, 2005,
commencing at 10:20 a.m.

ORIGINAL

1 Q. Had you ever had conversations with anyone
2 else in that group?

3 A. No, not to my recollection.

4 Q. Do you have any knowledge concerning the
5 proceedings before the Lynnfield
6 conservation commission with regard to the
7 Crystal site?

8 A. No.

9 Q. Are you aware of whether the town ever
10 considered a diesel fuel bylaw prior to Mr.
11 LaGreca introducing the idea to the town?

12 A. I'm not aware.

13 Q. How about diesel fuel regulations?

14 A. I'm not aware.

15 Q. Did Mr. LaGreca or anyone else ever show you
16 a proposed bylaw for diesel fuel burning?

17 MR. CLOHERTY: At any time?

18 MR. COLBERT: At any time.

19 A. Yes.

20 Q. When was that?

21 A. I don't recall specifically. Sometime
22 during the summer of 2003.

23 Q. What did you do with it when you received
24 it?

1 A. I read it.

2 Q. Anything else?

3 A. I may have passed it on. I think I passed
4 it on to town counsel.

5 Q. Was town counsel Tom Mullen at that time?

6 A. Yes, it was.

7 Q. Did you have any conversations with Tom
8 Mullen about the proposal that was given to
9 you?

10 MR. CLOHERTY: Yes or no answer,
11 please.

12 A. Yes.

13 Q. What were those conversations?

14 MR. CLOHERTY: Objection, I
15 instruct the witness not to answer.

16 MR. COLBERT: I just repeat --

17 MR. CLOHERTY: Certainly.

18 MR. COLBERT: -- our opposition to
19 your objection.

20 Q. How many conversations did you have with Tom
21 Mullen about the proposed diesel fuel bylaw?

22 MR. CLOHERTY: You can answer.

23 A. I don't recall. It was probably more than
24 one, but I can't tell you how many.

1 Q. More than three?

2 A. No. Several, two, three. I don't know.

3 Q. But not more than three or maybe more than
4 three?

5 A. Ever or up to that point?

6 Q. Up to that point.

7 A. Less than three.

8 Q. How about ever?

9 MR. CLOHERTY: Since the initiation
10 of this litigation?

11 MR. COLBERT: Yes.

12 A. Many.

13 Q. Up to the filing of the litigation though?

14 A. Yes.

15 Q. What, three?

16 A. No.

17 Q. Many?

18 A. Many.

19 MR. COLBERT: John, you're going to
20 object to my asking about the subject of
21 those conversations, each and every one of
22 them; is that right?

23 MR. CLOHERTY: Yes, I will unless
24 you can establish some other foundation that

1 they are not privileged. For instance, I'm
2 not going to tell you how to direct your
3 questioning but there's been a statement
4 made on the record at a public meeting I'm
5 sure where there was conversations that took
6 place in public. Those would not be
7 privileged. So I'm not going to instruct
8 the witness not to answer as to those
9 conversations.

10 Q. As to the conversations you had with
11 Attorney Mullen, was there anyone else
12 around that took part in those
13 conversations?

14 A. No.

15 Q. Were any of them in a public meeting?

16 A. Yes.

17 Q. Which ones?

18 MR. CLOHERTY: Which public
19 meetings? You're not asking the contents of
20 his discussions, right?

21 MR. COLBERT: I'm asking which
22 public meetings?

23 A. There was a Selectmen's meeting that was
24 held immediately preceding the town meeting

1 on October 20, 2003.

2 Q. Any other public meetings where
3 conversations took place with Attorney
4 Mullen about this diesel fuel bylaw?

5 A. Not that I recall.

6 Q. Did Attorney Mullen speak at the town
7 meeting in November of 2003 concerning
8 diesel fuel bylaw?

9 A. The meeting was in October but yes, he did.

10 Q. Could you tell me what he said, please?

11 A. He said that he had several concerns related
12 to the proposed bylaw. His main concerns
13 were possible federal preemption which he
14 somewhat discounted and thought that the
15 town could prevail on the preemption
16 argument and that he was concerned about
17 this bylaw as it may be applied to Crystal
18 Motors.

19 Q. Did he say anything else?

20 A. He was very careful in his discourse at the
21 town meeting, at one point stating that he
22 had some concerns, he was concerned about
23 potential litigation. He implied that he
24 had spoken to counsel for Crystal prior to

1 the town meeting, and he was fairly
2 confident, and I'm paraphrasing, that
3 litigation would result if this bylaw were
4 passed, although he had, quote, not seen the
5 complaint, quote. He claimed, he said that
6 he was somewhat concerned about whether this
7 could be considered some sort of a
8 regulatory taking.

9 Q. Did he explain what regulatory taking meant?

10 A. I don't recall whether he explained that at
11 the town meeting.

12 Q. Is this town meeting on a videotape
13 cassette?

14 A. It is.

15 MR. COLBERT: I had asked for that
16 the other day, John.

17 MR. CLOHERTY: I've already made my
18 request to my client. When we get it, we'll
19 provide it, Counsel.

20 Q. Did you speak at the town meeting on the
21 diesel fuel bylaw?

22 A. I did not.

23 Q. Did any of the Board of Selectmen speak?

24 A. Yes.

1 Q. Which ones and what did they say?

2 A. The chairman of the board, Bob Whalen spoke
3 and expressed on the one hand he thought
4 that there were, there was some merit to
5 these kinds of regulations but he felt -- he
6 didn't feel, he stated that based upon the
7 great potential for litigation that the
8 article should be indefinitely postponed.

9 Q. Did any other selectmen speak on the
10 article?

11 A. No.

12 Q. Is he a lawyer?

13 A. No.

14 Q. Any other town officials speak at that town
15 meeting?

16 A. Yes.

17 Q. Who?

18 MR. CLOHERTY: Just on the
19 article?

20 MR. COLBERT: On the article, yes.

21 A. The chairman of the planning board spoke on
22 behalf of the planning board on all articles
23 related to bylaws, the planning board must
24 make a recommendation.

1 Q. What is his name and what did he say with
2 regard to the diesel fuel bylaw?

3 A. His name is Richard O'Neill and his comments
4 pretty much mirrored that of the chairman of
5 the Board of Selectmen that there was a
6 great potential for litigation, and he
7 reported that the planning board had voted
8 to recommend indefinite postponement on the
9 article. Dr. Peinert spoke on behalf of the
10 Board of Health.

11 Q. When the planning board member spoke, did he
12 mention Crystal Motors?

13 A. I don't recall whether he specifically
14 mentioned them.

15 Q. Did you agree with the statements of town
16 counsel at the town meeting?

17 MR. CLOHERTY: Objection.

18 A. I don't know that I agreed with him or
19 disagreed with him. I understood his
20 concerns.

21 Q. Why did you understand his concerns?

22 MR. CLOHERTY: Objection.

23 A. Because he explained them in a way that I
24 could understand. I looked at the bylaw, he

1 told me what his concerns were and I could
2 look at the bylaw and listen to what he told
3 me and say okay, I understand.

4 Q. As the town administrator and also as a
5 lawyer, did you share any of his concerns?

6 MR. CLOHERTY: Objection.

7 A. Yes.

8 Q. Were any studies presented at the town
9 meeting that linked diesel fuel burning at
10 the Crystal site to potential adverse health
11 effects that could be caused to town
12 residents?

13 MR. CLOHERTY: Objection.

14 A. No study that was done specifically of that
15 site and those residents was presented.
16 There were general studies that were
17 mentioned.

18 Q. How about studies relating to any other
19 diesel burning site in the town of Lynnfield
20 and the potential adverse health effects
21 that could be caused to Lynnfield residents,
22 were any of those presented at the town
23 meeting?

24 A. Not that I recall.

1 Q. Would there be a record of those maintained
2 by the town somewhere if they had been
3 presented?

4 A. Yes.

5 Q. Where would that be maintained?

6 A. The town clerk. If anything was presented
7 at the town meeting and handed to the
8 moderator it should be in the town clerk's
9 files.

10 MR. COLBERT: I'm going to request
11 the town clerk's file on this town meeting
12 as well.

13 MR. CLOHERTY: Certainly. I don't
14 think that's been part of any prior request
15 so if you want to just put that in a letter,
16 cover letter to me, we'll follow-up.

17 MR. COLBERT: Okay, thanks.

18 Q. Are you aware of any other town that has a
19 diesel fuel burning bylaw in Massachusetts?

20 A. I'm not aware.

21 Q. Have you ever inquired into whether any
22 other town has such a bylaw?

23 A. No.

24 Q. Do you have a view as to whether state laws

1 concerning diesel fuel are adequate?

2 MR. CLOHERTY: Objection.

3 A. No.

4 Q. Do you have a view as to whether federal
5 laws regarding diesel fuel are adequate?

6 MR. CLOHERTY: Objection.

7 A. No. I don't have enough, I don't know about
8 those regulations and laws. There's no way
9 I could know.

10 Q. Other than public meetings you referenced
11 with regard to Attorney Mullen, were there
12 any Board of Selectmen meetings where
13 Attorney Mullen made statements about the
14 diesel fuel bylaw?

15 A. Not that I recall.

16 Q. Any other town departments where Attorney
17 Mullen made such statements at their
18 meetings?

19 A. I don't know.

20 Q. How about executive sessions of meetings of
21 the Board of Selectmen, did Attorney Mullen
22 ever attend meetings and discuss the diesel
23 fuel bylaw during any executive session?

24 MR. CLOHERTY: Objection. You can

1 answer yes or no.

2 A. I don't -- I don't believe so.

3 Q. How about any other meetings that were not
4 open to the public that Attorney Mullen had
5 with you, were there any conversations about
6 the diesel fuel bylaw?

7 MR. CLOHERTY: Objection. Yes or
8 no, please.

9 A. Meetings?

10 Q. Yes.

11 A. I don't believe so.

12 Q. So other than telephone calls there were no
13 face-to-face meetings with Attorney Mullen
14 concerning the diesel fuel bylaw that you
15 had?

16 MR. CLOHERTY: Objection. Yes or
17 no, please.

18 A. Not that I recall.

19 Q. Do you know whether any other town official
20 had conversations with Attorney Mullen that
21 were not part of the public meeting
22 concerning the diesel fuel bylaw?

23 A. I don't know.

24 Q. You are aware that the diesel fuel bylaw

1 contains a provision that prohibits the
2 location of a diesel burning site within
3 1,000 feet of a residential area; is that
4 right?

5 A. Yes.

6 Q. Do you have any understanding as to the
7 basis for the 1,000 foot setback?

8 A. No.

9 Q. Did you ever discuss that with anyone?

10 A. Yes.

11 Q. Who?

12 A. Town counsel.

13 Q. What did you say?

14 MR. CLOHERTY: Objection. Don't
15 answer that.

16 MR. COLBERT: We'll repeat our
17 opposition to the objection.

18 Q. Anyone else other than town counsel?

19 A. Not that I recall.

20 Q. How about any other provision of the diesel
21 fuel bylaw, did you have conversation with
22 anyone regarding concerns about specific
23 provisions?

24 A. Yes.